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The Aeronautics Act Amendments:

an Overview

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The Aeronautics Act Amendments: an Overview



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information purposes. In the event
of conflict, the *Aeronautics Act*
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Foreword

On June 28, 1985, Royal assent was given to Bill C-36, *An Act to amend the Aeronautics Act*. The product of several years of analysis and public consultation, this amending legislation represented the most comprehensive revision of the *Aeronautics Act* ever undertaken.

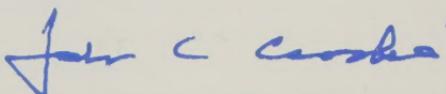
The impetus for reform was aviation safety. Despite enormous technological advances and the greatly increased importance of civil aviation in Canada, the *Aeronautics Act* retained the basic structure of this country's first aviation legislation, the *Air Board Act* of 1919. By the 1970s, industry and government shared the view that, notwithstanding piecemeal amendment over the years, the *Act* did not meet the needs of modern aviation. There was concern that safety might be compromised by the overly complex and inflexible regulatory scheme and it became clear that an entirely new approach to aviation safety regulation would be needed.

The reform process began in 1978 when the *Aeronautics Act Task Force* was created and given a mandate to review and reformulate the aeronautics legislation. The Task Force carried out its work in consultation with the aviation industry.

In 1979 the *Commission of Inquiry on Aviation Safety* was appointed to investigate and report on, among other matters, "the formulation of laws, regulations and rules necessary for the safe and proper navigation of aircraft." The Commission, headed by Mr. Justice Charles L. Dubin of the Ontario Supreme Court, produced a three-volume report in 1982 which recommended major changes to the *Aeronautics Act* in the area of enforcement.

Bill C-36 incorporated the proposals of the Task Force and addressed the major recommendations of the Dubin Commission. It also included provisions from earlier reform bills which had been tabled in Parliament but not passed.

The amendments brought about by Bill C-36 provide Transport Canada with the necessary regulatory authority to ensure that an adequate level of safety can be maintained into the 21st century. The Government of Canada has committed resources to ensure the highest possible level of aviation safety in Canada but, of course, the ultimate responsibility for safety remains with each member of the aviation community. I therefore encourage everyone involved in the operation of aircraft to study this overview of the *Act* amendments and become familiar with the new scheme. Knowledge is an important factor in ensuring aviation safety.



Hon. John C. Crosbie
Minister of Transport



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Chapter One

The New Legislation — Changes to the Regulation of Aeronautics

I. Aeronautics: The Legislative Scheme

A complete understanding of the new provisions of the *Aeronautics Act* requires a brief introduction to the structure of aeronautics legislation.

Aeronautics Act, R.S.C. 1970, c.A-3, As Amended

The *Aeronautics Act* was passed by the Parliament of Canada in the exercise of its exclusive jurisdiction to make laws with respect to aeronautics. Before amendment, the *Act* was divided into three parts: Part I dealt with the control of aeronautics in general, Part II with the regulation of commercial air services by the Canadian Transport Commission, and Part III with miscellaneous administrative provisions. The changes made by Bill C-36, which was passed into law on June 28, 1985, involve the expansion and revision of Part I and the addition of a new Part IV, which creates a Civil Aviation Tribunal.

Minister's Responsibilities

Part I of the *Act* provides the basis for the regulation of aeronautics. By Section 3.2, the Minister of Transport is made "responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics". To discharge these responsibilities, the Minister may perform the functions listed in that section. For example, he/she may "construct, maintain and operate aerodromes", "provide financial and other assistance", and more generally "promote aeronautics by such means as the Minister considers appropriate". These amendments clearly authorize the Minister to undertake certain activities; formerly, the *Act* simply listed the duties of the Minister.

Air Regulations

The *Act* enables the Governor in Council (the Cabinet) and the Minister of Transport to make regulations and orders to carry out the Minister's mandate. Regulations are technical rules made by Cabinet on the advice of the Minister. Some of the matters which may be dealt with by regulation are set out in Section 3.9 of the *Act*; examples are the accreditation and licensing of flight crew members, the certification of air carriers and the prohibition of the use of airspace and aerodromes. Aeronautics regulations are currently found in the *Air Regulations*; they are divided into eight parts according to subject matter.

Air Navigation Orders

Orders provide technical details and prescribe standards and conditions that are too lengthy to be included in the regulations. Most orders are made by the Minister of Transport. Aeronautics orders are found in the Air Navigation Orders (the “ANOs”). They are divided into seven series which correspond to seven of the eight parts of the *Air Regulations* (there are no Series VI ANOs).

Another type of order is made in respect of a particular person, aerodrome or aeronautical product. These specific orders are not part of the general legislation governing aeronautics.

Contraventions

Aviation safety requires that dangerous or improper flying practices be discouraged. Thus, the *Aeronautics Act* provides that a person who contravenes a provision of Part I of that Act, or any regulation or order made under that Part, is guilty of an offence. In other words, all three classes of legislation (the *Act*, the *Air Regulations* and the *Air Navigation Orders*) may create offences which may be tried in court or dealt with administratively.

Figure 1 illustrates the enforcement action which may be taken when a contravention occurs. The *Act* now differentiates between “designated provisions” and all other provisions. Where a provision is specially designated, the Minister may only assess a monetary penalty or suspend or cancel the offender’s “Canadian aviation document” (for example, his

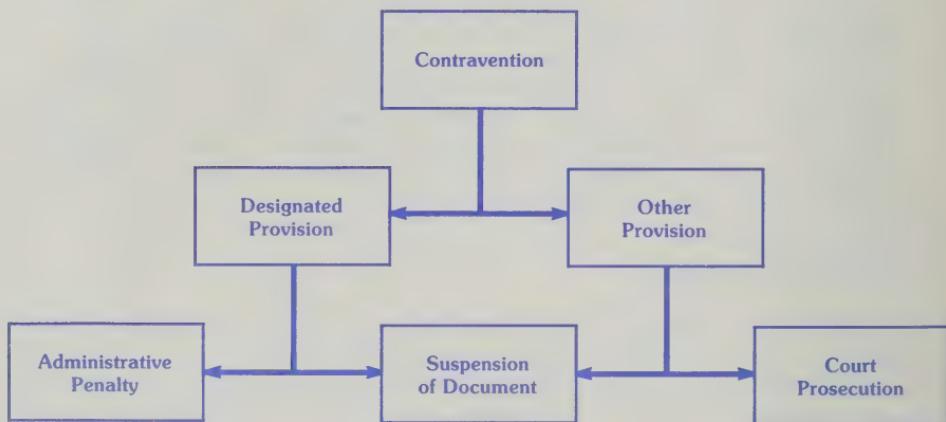


Figure 1. Enforcement Action: Alternatives.

Where a person contravenes a provision of Part I of the *Aeronautics Act*, or a regulation or order made under that Part, he or she commits an offence. If that provision has been “designated” (listed in a special regulation), punishment may only be imposed administratively: the Minister may assess a penalty or suspend or cancel the holder’s Canadian aviation document. If the provision has not been designated, the Minister may suspend or cancel the holder’s document or prosecute the offender in the criminal courts.

private pilot licence). No prosecution of the alleged offender is possible. A contravention of any other provision may be tried in court or punished by way of suspension or cancellation.

Suspensions and cancellations are discussed in detail in Chapter Two of this overview. Designated provisions and other types of offences and punishment are the subject of Chapter Three.

II. General Regulatory Powers — Changes

New and expanded powers to make regulations have been added to the Aeronautics Act to ensure that aviation safety measures can be improved. The most important changes made to these powers are listed below, along with the corresponding provisions of the Act.

Accreditation and Licensing: Paragraph 3.9(a)

- A. The licensing power has been enlarged to include non-flight crew members such as operators of equipment used to provide services relating to aeronautics, other persons providing such services and persons engaged in the production of aeronautical products or the installation and maintenance of equipment. This change will ensure that all documents currently issued are clearly authorized by the Act and that all persons whose activities affect the safety of general aviation may be licensed if necessary.

Aeronautical Products and Equipment: Paragraphs 3.9(b)(c)

- B. Regulations may be made respecting the design, manufacture, distribution, maintenance, approval, installation, registration, licensing, identification and certification of aeronautical products (aircraft and components), air navigation equipment and facilities. They will permit the production history of aircraft parts and air navigation equipment to be traced and will contribute to the establishment of Canadian airworthiness standards for a wide variety of products.

Flight Simulators: Paragraph 3.9(d)

- C. A new power to regulate and approve flight simulators and other flight training equipment has been added.

Aerodromes: Paragraph 3.9(e)

- D. In order to improve the safety and efficiency of aerodrome operations, activities such as the movement of motor vehicles and the lighting and marking of roadways may be regulated. The location of new aerodromes may be regulated for the same reasons. A certification process will replace the licensing of aerodromes. It will permit service and safety standards to be applied to various classes of aerodromes and airports, based on traffic volume, flight patterns and so on.

Noise: Paragraph 3.9(f)

- E. Regulations may be made to control aircraft noise and noise emanating from aerodromes. Existing procedures for noise certification and noise abatement may be expanded and improved.

Certification of Air Carriers: Paragraph 3.9(g)

- F. This provision clarifies the regulatory authority of the Minister of Transport to certify air carriers as being adequately equipped and capable of conducting a safe operation.

Conditions of Transport: Paragraph 3.9(i)

- G. The scope of regulation of conditions of transport has been clarified. The phrase "goods, mails and passengers" has been replaced with the more precise phrase "persons or personal belongings, baggage, goods or cargo of any kind". Moreover, regulations may control transport of such goods "by" aircraft (not "in" aircraft as before) to ensure that external cargo is taken into account.

Airspace: Paragraphs 3.9(k)(l)

- H. The classification and use of airspace may now be regulated in addition to the control and use of aerial routes. The power to prohibit navigation over prescribed areas has been replaced by the power to prohibit the use of airspace (a more flexible term) or aerodromes. A special power has been established which enables the Minister to prohibit or restrict the operation of aircraft in certain airspace by means of a notice (i.e. a NOTAM) so long as the prohibition or restriction is necessary to ensure aviation safety. This procedure will permit the restrictions to be put into effect as soon as possible; it can therefore be used for emergencies such as forest fires.

Prohibitions: Paragraph 3.9(m), Subsection 4.9(4)

- I. The power to prohibit the doing of any act or thing by regulation has been added to overcome doubts whether the power to regulate necessarily includes the power to prohibit. The prohibition may be absolute, conditional or intermittent, depending on the circumstances.

Hazardous Objects: Paragraph 3.9(o)

- J. A general power to regulate in respect of the use and operation of "objects that, in the opinion of the Minister, are likely to be hazardous

to aviation safety” replaces the previous power that was restricted to hazardous “rockets, moored balloons and kites”.

Records: Paragraph 3.9(s)

- K. Regulations may be made respecting the keeping and preservation of records and documents relating to aerodromes, activities related to aeronautics, persons holding Canadian aviation documents and aeronautical products, equipment and facilities. Such regulations will ensure the retention and maintenance of proper documentation and facilitate the introduction of reporting systems (e.g. service difficulties).

Aviation Fuel and Other Chemicals: Paragraph 3.9(t)

- L. This provision authorizes the making of regulations respecting handling, marking, storage and delivery of any fuels, lubricants or chemicals used during, or in connection with, the operation of aircraft. It will permit the imposition of standards designed to prevent “accidents” caused by the mishandling or deficient quality of fuels and other substances.

Air Navigation Services and Facilities: Paragraph 3.9(u)

- M. Regulations may be made regarding the provision of facilities, services and equipment relating to aeronautics, ranging from air traffic control to UNICOM systems. Such regulations will govern services provided by both the private sector and the Department of Transport.

Aviation Weather Services: Paragraph 3.9(v)

- N. Regulations may be made governing the provision of aviation weather services by persons other than the federal government, a recognition of growing private-sector involvement in this field.

III. Charges

Legal References: Sections 3.4, 3.5, Aeronautics Act.

Charges for Availability of Services

Regulations may be made imposing charges for the availability, during flights, of any facility or services provided by, or on behalf of, the Minister. Often it is impossible to determine whether aircraft are making use of certain services, particularly those which facilitate air navigation. Charges for such services must therefore be based on their availability.

Charges for Use of Services

For other services, it is easy to discover whether aircraft have made use of them. An example is the assessment of airport fees based on numbers of landings. Although regulations imposing such charges were authorized by the Act prior to amendment, charges may now be made payable whether or not the flight originates or terminates in Canada or any portion of the flight is over Canada.

Charges for Preparation of Documents

Regulations may also impose charges for the issuance, renewal, amendment or endorsement of any document issued or to be issued under Part I of the Act, and for any administrative action taken to prepare it. This provision enables Transport Canada to recover significant expenses relating to the preparation of certain documents, especially those involving major investigations such as aircraft type approval. Charges will apply whether or not the document sought is actually issued.

Interest

Regulations which establish charges may state the amount of the charge or the manner of its calculation, and may specify the rate of interest and the time from which interest is payable. Interest may be imposed by regulation on every charge imposed under the Act. Charges and all interest payable constitute a debt due to Her Majesty and may be recovered in a court action. The owner and the operator of an aircraft are both liable for payment of the charge.

Security for Payment

The Act authorizes regulations that would allow the Minister to require owners or operators having a history of late payment or non-payment of charges to deposit security in the form of a bond or letter of credit. The Minister will determine the amount of security satisfactory to ensure full payment of the charges likely to be imposed in the next year in respect of the aircraft.

Seizure and Detention

Where charges imposed are not paid, the Minister may seize and detain any aircraft of the debtor owner or operator in addition to suing to recover the charges in court. The Minister must apply to the superior court of the province in which an aircraft owned or operated by the debtor is located for an order authorizing the seizure and detention of the aircraft. The application may be made without notice to the debtor where the Minister believes that the debtor is about to leave Canada or take his/her aircraft from Canada. Seizure will be regarded as an extraordinary measure to be taken only when other collection procedures have failed.

Exempt Aircraft

The Minister will not release an aircraft that has been detained unless the owner or operator pays the debt or deposits a satisfactory form of security. Occasionally, aircraft may be exempt from seizure under provincial law; in such cases, the Minister may not seize or detain the aircraft for non-payment of charges. Regulations may be made to exempt other aircraft from seizure and detention.

IV. Aeronautics Security

Legal References: Sections 3.7, 3.8, Aeronautics Act.

Changes to the Aeronautics Act provide for substantially increased security measures. New, wider powers have been added to make regulations for the purposes of protecting passengers, crew members, aircraft, aerodromes and other aviation facilities, preventing unlawful interference with civil aviation and dealing with such interference when it occurs.

Security Measures

Before amendment, the regulations dealt only with procedures for the observation, inspection and search of persons, baggage and cargo. The Act now authorizes a broader range of security measures: owners or operators of Canadian or foreign aircraft that use Canadian aerodromes, operators of those aerodromes and persons carrying on any activity at aerodromes are all required to establish, maintain and carry out security measures contained in the regulations or approved by the Minister.

Approval

There are certain security measures which must remain secret if they are to be effective. For this reason, the Minister of Transport is given the power to approve appropriate security measures submitted by the air carriers and airport operators. The Act makes it an offence to disclose to any other person the nature of security measures approved by the Minister. Only two exceptions are made: (1) where disclosure is required by law, and (2) where disclosure is necessary to make the security measures effective.

Authorized Searches

The Act also provides that members of the public must either submit to a required security search or not board the aircraft. It is an offence to board an aircraft without submitting to an authorized search of one's person or goods when required to do so by a security officer. Similarly, a person must not attempt to place on board an aircraft goods that he/she has not permitted to be searched. Where a person has already boarded and refused to submit to a required search, he/she may be ordered

to leave the aircraft and remove his/her goods. It is an offence not to remove oneself and one's goods when ordered to do so by a security officer. Security officers are given the power to search unaccompanied goods (cargo) received at an aerodrome for transport on an aircraft and to use such force as is necessary to carry out that search.

Notice

The operator of an aerodrome must post a notice informing the public that security measures are being taken to observe and inspect passengers and goods being placed on aircraft and that no person is obliged to submit to a search if he/she chooses not to board, or place goods on board, an aircraft.

Other security measures such as restricted areas, security training or the provision of law enforcement services will be described generally in the new regulations. They will not apply to all aircraft and aerodrome operators; rather, the security measures that must be carried out will depend upon the size and use of the aircraft or aerodrome.

International Security Measures

To best ensure the safety of international air traffic, similar security precautions must be taken in other countries. Foreign-owned or -operated aircraft are prohibited from landing at a Canadian aerodrome unless the aircraft and all persons and goods on board have been subjected to security measures equivalent to those established by the Canadian regulations.

V. Airport Zoning

Legal References: Sections 4.4 – 4.8, Aeronautics Act.

Before the recent changes to the Aeronautics Act, land use regulations for areas adjacent to airports could deal only with the height, use and location of buildings and structures. The scope of such regulations has been widened in order that airports may continue to function safely and efficiently. Three separate classes of land have been established according to the type of control appropriate for each:

Lands Near Federal Airports: Paragraph 4.4(2)(a)

- A. Lands adjacent to, or in the vicinity of, a *federal* airport or airport site may be subject to regulation to prevent use or development that is, in the opinion of the Minister, incompatible with the operation of an *airport*;

Lands Near Airports: 4.4(2)(b)

- B. Lands adjacent to, or in the vicinity of, any airport or airport site may be subject to regulation to prevent use or development that is, in the opinion

of the Minister, incompatible with the safe operation of an airport or aircraft;

Lands Near Aeronautical Services: Paragraph 4.4(2)(c)

- C. Lands adjacent to, or in the vicinity of, facilities used to provide services relating to aeronautics (e.g. radio beacons) may be subject to regulation to prevent use or development that would, in the opinion of the Minister, *cause interference* with signals or communications to and from aircraft or to and from those facilities.

The power to regulate with respect to federally owned airports (A above) is broader than that given with respect to all airports (B) in that the former is not restricted to safety-oriented regulation: it authorizes regulations dealing with such matters as traffic access and noise levels. Both powers refer to federal airport sites as well as airports. This reference will ensure that such sites are protected from adverse development before an airport is built and put into operation.

Provincial Agreement

Before making a zoning regulation in respect of incompatible uses at a federal airport, the Minister of Transport must make a reasonable attempt to reach an agreement with the government of the province in which the lands are located. If no agreement can be made or if the Minister is of the opinion that the zoning regulations must be made *immediately* to prevent the use or development of the lands in a manner incompatible with an airport, then the Minister may draft a regulation for Cabinet approval. Consultation with the provinces is not required for zoning regulations in respect of safety-related matters. Such regulations, concerned solely with aviation safety, are a matter within the exclusive jurisdiction of Parliament.

Notice and Hearing

The Act sets out a publication procedure that requires new zoning regulations to be published in local newspapers so that persons whose interests might be affected are given proper notice and a reasonable opportunity to be heard. A regulation, once made, must again be published in a local newspaper and deposited in the relevant land registry or land titles office. Expropriation will continue to be dealt with under the federal *Expropriation Act*.

Entry to Ensure Compliance

The Minister has the power to enter on lands to ensure compliance with the zoning regulations. He/she must serve the owner with a notice of intention to enter. An owner who objects to the Minister's entry, or the steps to be taken to achieve compliance, has thirty days to file a written objection with the Minister. Thereafter, the owner shall be given a hearing before the Minister. If the Minister decides not to give effect to the objections, he/she must give reasons for that decision.

Where a notice of intention to enter has been served and no objection has been received, or the Minister decides not to give effect to the objection, the Minister may enter on the lands and take such steps as are reasonably necessary to prevent the continuation of the contravening use.

Land owners are not entitled to any compensation or costs for any loss, damage, removal or alteration resulting from the application of a zoning regulation. This is a substantial change from the old Act.

VI. Hours of Work

Legal Reference: Paragraph 4(a), Aeronautics Act.

The power to make regulations limiting the hours of work of flight crew members has been extended to include flight crew members of any aircraft used for carrying passengers, not just those employed by commercial air services. The Minister may, in the interest of aviation safety, establish maximum flight times, maximum flight duty times and minimum rest periods for flight crews of private passenger-carrying operations (e.g. corporate flight crews), as well as commercial operations.

VII. Insurance

Legal Reference: Paragraph 4(b), Aeronautics Act.

The Aeronautics Act now authorizes the Governor in Council to make regulations requiring owners and operators of aircraft to subscribe for, and carry, liability insurance, where they are not already required to do so under Canadian Transport Commission regulations. This new provision affects private owners and others not already engaged in commercial air services. Proposed regulations call for owners and operators to carry a minimum level of public liability insurance based on the weight of their aircraft.

VIII. Medical and Optometric Information

Legal Reference: Section 5.5, Aeronautics Act.

Aviation safety requires that persons who hold Canadian aviation documents such as licences be in a fit medical condition to exercise the privileges given to them. Each individual has the responsibility to ensure that he or she is fit to fly or engage in any other activity authorized by the document. For this reason, the *Aeronautics Act* requires the holder of a Canadian aviation document that imposes standards of medical or optometric fitness to advise his/her doctor or optometrist that he/she holds such a document. This requirement is an important first step in a new system of reporting designed to protect the lives and property of all Canadians.

Duty to Report Hazardous Conditions

Where any doctor or optometrist believes on reasonable grounds that a patient of his/hers is a flight crew member, air traffic controller or other holder of a Canadian aviation document imposing standards of fitness, that doctor or optometrist must report to a medical adviser designated by the Minister any condition which, in his/her opinion, is likely to constitute a hazard to aviation safety.

Medical information received by the adviser will be treated with the strictest confidence. A person who holds a Canadian aviation document is deemed to have consented to the giving of information to the Minister's medical adviser. However, this implicit consent will not allow the Minister to treat confidential information in a casual manner.

Information given by a doctor is privileged, and no person shall be required to disclose it or give evidence relating to it in any legal, disciplinary or other proceedings. In fact, information reported to the Minister shall not be used in any such proceedings.

Examination

No licence will be withdrawn on the basis of a doctor's or optometrist's report made pursuant to section 5.5. The document holder will be requested by the Regional Aviation Medical Officer to undergo an examination by a designated medical officer or to see a specialist who will report his/her findings.

The Minister's Decision; Review; Appeal

Only the Minister has the authority to decide whether a person is fit to hold a Canadian aviation document. Where the Minister decides to suspend, cancel or refuse to renew a document, the holder may seek a review of that decision before the Civil Aviation Tribunal. The Tribunal will afford the holder a full hearing with an opportunity to present evidence and make representations with respect to the Minister's decision. The decision may be confirmed, or it may be sent back to the Minister for reconsideration. An appeal to a panel of three tribunal members is available.

IX. Enforcement Powers

Legal Reference: Section 7.6, Aeronautics Act.

The Minister of Transport has delegated to his inspectors certain powers to enforce the provisions of Part I of the *Aeronautics Act*, the *Air Regulations* and the *Air Navigation Orders*. These powers are of three types:

- A. Inspection: Specific powers of inspection are located in the *Air Regulations*. The *Act* provides a power to enter any aircraft, aerodrome, facility relating to aeronautics or premises used for the design, manufacture, dis-

tribution, maintenance or installation of aeronautical products for the purposes of making inspections.

- B. Seizure: A power to seize anything found during an inspection that will afford evidence with respect to an offence under Part I of the *Aeronautics Act*.
- C. Detention: A power to detain any aircraft that the Minister believes on reasonable grounds is unsafe or likely to be operated in an unsafe manner, and to take reasonable steps to ensure its continued detention.

Members of the RCMP have also been delegated these powers.

The provisions of the *Criminal Code* with respect to search warrants (application, execution, disposition of articles seized) apply to enforcement of the *Aeronautics Act*. A warrant is required where entry is sought to a dwelling house for the purposes of inspection or investigation, unless the occupant of that dwelling house consents to the entry. Before a warrant may be issued, a justice of the peace must be satisfied that entry to the house is necessary and that entry has been refused or that there are reasonable grounds for believing that entry will be refused. The official executing the warrant shall not use force to obtain entry unless he/she is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

A warrant is also required where an inspector or peace officer believes on reasonable grounds that an offence has been committed and he/she seeks entry to a building, receptacle or place for the purposes of searching for, and seizing, relevant evidence.

Inspectors conducting routine inspections or investigations may enter premises other than dwelling houses without a warrant by virtue of the powers described in paragraph 7.6(1) (a).

X. Civil Aviation Tribunal

Legal Reference: Part IV, *Aeronautics Act*.

An independent Civil Aviation Tribunal has been created by Part IV of the *Aeronautics Act* to review administrative decisions that affect licences or impose penalties. The aviation community has long argued that the interests of pilots and other document holders would be better served by establishing a specialized review body that is independent of Transport Canada. Every person affected by an administrative decision to suspend, cancel or refuse to renew a document, or to impose a monetary penalty, will have an opportunity to be heard by the Tribunal, to present evidence and to make representations.

Review

The initial review from an administrative decision will be heard by a single member of the Tribunal who will conduct an informal hearing. Both the Minister and the document holder will present their cases.

Determination

After both parties have made final arguments with respect to the matters in issue, the Tribunal will make a determination. In all cases except those involving a person's competence or qualifications to hold a document, the Tribunal has the full power to set aside the Minister's decision and substitute its own. Any party to the proceedings may request the Tribunal to furnish written reasons for its determination.

Right of Appeal

If a person is not satisfied with that determination, he or she may appeal to a three-member panel of the Tribunal. This appeal will be limited to the merits of the matter based on the record of the review and oral argument.

Membership

The members of the Tribunal will be appointed by the Governor in Council. The primary qualifications for membership are "knowledge and experience in aeronautics." Members will be drawn from various aviation disciplines (pilots, air services managers, maintenance engineers, and so on) as well as the legal and medical professions. Supervision over, and direction of, the work and staff of the Tribunal are the duties of the full-time Chairman. Other members may be appointed on a full- or part-time basis as the circumstances require. The Tribunal will sit when and where the Chairman considers it necessary. Where its members require technical help, the Tribunal may appoint experts or persons having technical or special knowledge to assist it in an advisory capacity.

Chapter Two

Canadian Aviation Documents

I. Canadian Aviation Document: Definition

Legal References: Subsection 2(1), Section 5.6, *Aeronautics Act*.

A Canadian aviation document is any licence, permit, accreditation, certificate or other document issued by the Minister under Part I of the *Aeronautics Act*. It may be a document issued in respect of a person, such as a private pilot licence, or a document issued in respect of any aeronautical product (including an aircraft), aerodrome, facility or service. Other forms of documents are airport licences, commercial air services' operating certificates and certificates of airworthiness or flight permits. In the measures to be discussed below, "Canadian aviation document" includes the privileges accorded by that document; the privileges attaching to pilot licences are set out in Air Navigation Order, Series IV, Number 2.

II. Grounds for Suspension, Cancellation or Refusal to Renew

The Minister of Transport may suspend, cancel or refuse to renew a Canadian aviation document on the grounds listed below.

Contravention of Provisions, Regulations or Orders

- A. The Minister may *suspend or cancel* a Canadian aviation document for contravention of any provision of Part I of the *Aeronautics Act*, or any regulation or order made under that Part: Section 5.9, *Aeronautics Act*.

Threat to Aviation Safety

- B. The Minister may *suspend* a Canadian aviation document where an immediate threat to aviation safety exists or is likely to occur as a result of any act done under the authority of that document: Section 6, *Aeronautics Act*.

Medical Grounds

- C. The Minister may *suspend, cancel, or refuse to renew* a Canadian aviation document on medical grounds: Paragraph 6.1(1)(a), *Aeronautics Act*.

Incompetence

- D. The Minister may *suspend or cancel* a Canadian aviation document on the ground that the holder of the document is incompetent: Paragraph 6.1(1)(b), *Aeronautics Act*.

Lack of Qualification or Non-compliance with Conditions

- E. The Minister may *suspend or cancel* a Canadian aviation document on the ground that the holder or any aircraft, airport or other facility in respect of which the document was issued is no longer qualified or does not meet, or comply with, conditions attached to that document: Paragraph 6.1(1)(b), *Aeronautics Act*.

The process for reviewing each of these decisions will be discussed in detail below.

The Governor in Council may make regulations creating additional grounds for suspension, cancellation or refusal to renew.

III. Special Measures: Introduction

Legal References: Sections 5.6-6.2, *Aeronautics Act*.

Natural Justice

The Aeronautics Act has been amended to provide pilots and other holders of Canadian aviation documents with an independent review of the Minister's decisions to suspend or cancel those documents, or not to renew them on medical grounds. This procedural protection is based on concepts of "natural justice". It has two essential principles:

- (a) The individual must be given adequate notice of the case against him or her;
- (b) He or she must be afforded a hearing before an independent tribunal free from bias, with an opportunity to present evidence and to make representations with respect to the matters in issue.

The hearing will be held before the Civil Aviation Tribunal.

Review

Where, for example, the Minister decides to suspend or cancel a licence for contravention of the regulations, the holder of that licence may request a review before the Tribunal. The holder and a representative of the Minister will then appear before a single member of the Tribunal, who will afford both parties "a full opportunity consistent with procedural fairness and natural justice to present evidence and make representations in relation to the suspension or cancellation under review." Both parties may be represented by counsel, may call witnesses, may cross-examine witnes-

ses for the other party and may make submissions with respect to the matter in issue. The Tribunal, in making its determination, may confirm the Minister's decision or may substitute its own decision.

Differences in Procedure

There are differences in procedure depending upon the grounds for suspension or cancellation. A suspension or cancellation for contravention of the regulations does not take effect until thirty days after notice of the decision is sent to the document holder and may be stayed until the Tribunal makes its determination. A suspension made on the basis of an immediate threat to aviation safety or a suspension or cancellation made on medical grounds or grounds of incompetence may operate from the moment it is made (thus, before a hearing) and cannot be stayed pending review.

A licence holder whose document is suspended or cancelled for a contravention or on medical or other grounds of disqualification may apply to the Tribunal for extra time to file a request for review. If he or she is suspended because his or her activities pose an immediate threat to aviation safety, no extension of time is permitted.

Finally, where a licence is suspended or cancelled on medical grounds or on grounds of incompetence or failure to qualify, the Tribunal may not substitute its own decision for that of the Minister; it may only confirm the Minister's decision or send the matter back to the Minister for reconsideration.

IV. Contravention of Provisions, Regulations and Orders

Legal References: Sections 5.9, 6.2, Aeronautics Act.

Grounds for Decision

Where the holder of a Canadian aviation document or the owner or operator of any aircraft, airport or facility for which a document was issued contravenes any provision of Part I of the *Aeronautics Act* or any regulation or order, the Minister may decide to suspend or cancel the document. As figure 2 illustrates, suspension and cancellation are but one enforcement alternative. Depending upon whether or not the provision contravened is designated, the Minister may choose instead to assess a penalty or prosecute the alleged offender.

Notice

On deciding to suspend or cancel, the Minister must send the document holder a notice specifying the contravention and the effective date of the suspension or cancellation (no earlier than thirty days after the notice is served or sent). The notice must also inform the document holder of his/her right to request a review of the Minister's decision before the Civil Aviation Tribunal.

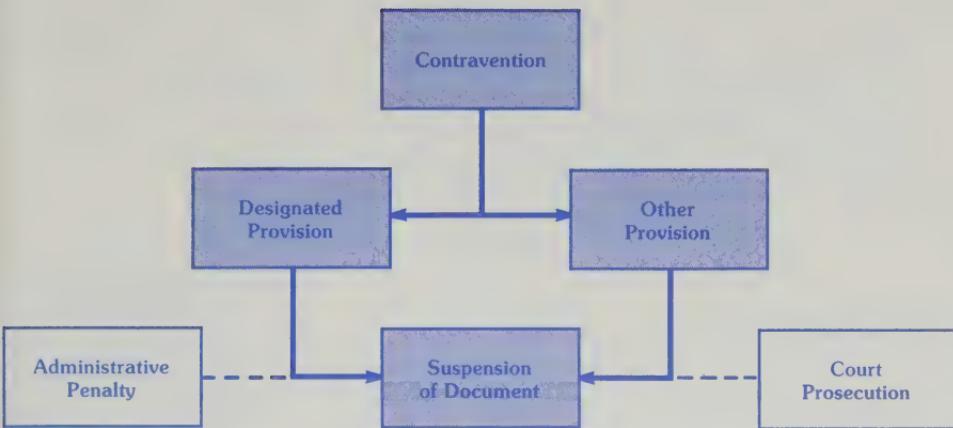


Figure 2. Suspension or Cancellation.

The Minister may decide to suspend or cancel a Canadian aviation document for any contravention of a provision, regulation or order, whether or not that provision is designated.

Informal Meeting/Request for Review

Within the thirty-day period before the suspension or cancellation takes effect, the document holder may meet informally with the Regional Manager, Aviation Enforcement. This meeting will provide an opportunity to discuss the appropriateness of the suspension or cancellation; the finding that a contravention has occurred will not be at issue. If the document holder and the Regional Manager can agree on a different sanction, the right to a review may be waived. However, if no agreement can be reached or the document holder objects to the finding of a contravention, then he/she must file a written request for review with the Tribunal office before the thirty-day period expires. The informal meeting is an optional step which the document holder is not obliged to take.

Stay

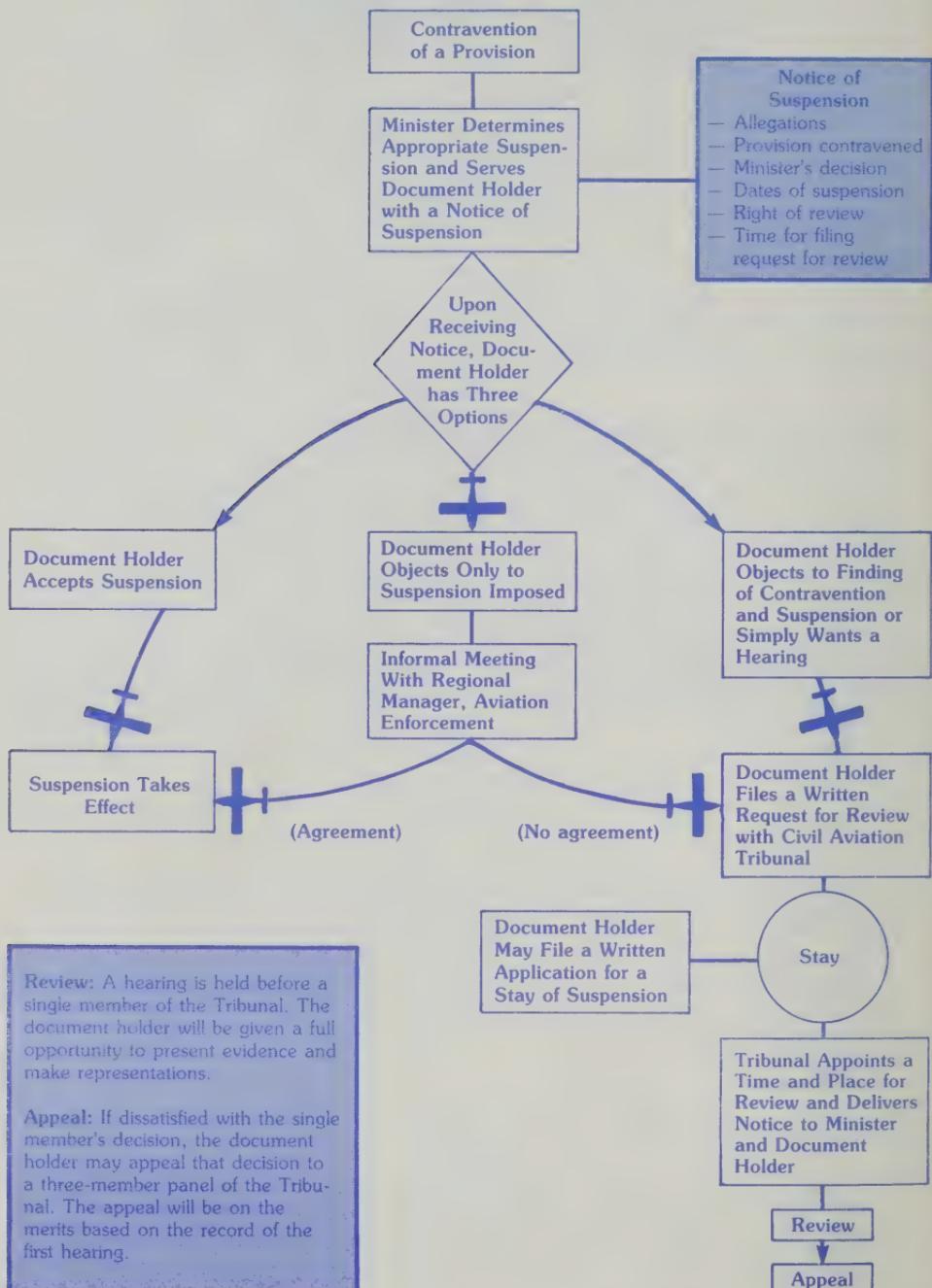
The filing of a request for review will not prevent the suspension or cancellation from coming into force at the end of the thirty-day period; the document holder must also file a written application for a stay. In dealing with such an application, the Tribunal may hold a hearing or simply accept written submissions. A stay will normally be granted unless the Tribunal decides that to grant a stay would result in a threat to aviation safety.

Hearing/Determination

The Tribunal will appoint a time and a place for the hearing on the issue of suspension or cancellation, and give written notice to both the Minister and the document holder. At the hearing, which is held before a single member of the Tribunal, both parties will be provided with "a full

Figure 3

Suspension or Cancellation for Contravention of a Provision — Procedure Section 5.9, Aeronautics Act



opportunity consistent with procedural fairness and natural justice" to present evidence and to make representations with respect to the decision under review. The document holder may call witnesses and introduce evidence, may cross-examine the Minister's witnesses and may make submissions with respect to the validity of the Minister's decision. The Tribunal member may deal with the matter as if he/she were making the original decision. He/she may confirm the suspension or cancellation or substitute his/her own decision for that of the Minister.

Right of Appeal

The holder of the document, the Minister and any person affected by the determination of the Tribunal have a right of appeal to a three-member panel of the Tribunal. The appeal must be commenced within ten days after the determination. This appeal is not a new opportunity to present evidence. The panel is restricted to considering the merits of the determination based on the record of the proceedings before the single member (i.e. Did the member make a proper decision on the facts?). The panel may only hear relevant evidence that was not previously available, and will allow oral argument. The panel may determine the matter by dismissing or allowing the appeal and, in so allowing, may substitute its decision for that of the single member.

V. Immediate Threat to Aviation Safety

Legal References: Sections 6, 6.2, Aeronautics Act.

Grounds for Decision

The Minister may suspend (but not cancel or refuse to renew) a Canadian aviation document on the ground that an immediate threat to aviation safety exists or is likely to occur as a result of an act or thing done under the authority of the document. The duration of the suspension imposed will depend upon the nature of the particular threat.

Immediate Effect

Unlike a suspension for contravention of regulations, a suspension on the ground of immediate threat to aviation safety may take effect immediately. The filing of a request for review does not operate as a stay of this type of suspension, nor may the document holder apply for a stay.

Notice

The Minister must, as soon as possible by personal service or registered mail, notify the document holder of his/her decision to suspend the document. The notice must indicate the threat to safety upon which the Minister relies, and the nature of the act or thing alleged to create that threat.

Request for Review

The document holder has thirty days after the notice is served or sent to file a written request for review with the Civil Aviation Tribunal. No extension of this limitation period may be granted. The immediate nature of the danger justifies suspension before a hearing and places the onus on the holder of the document to seek a remedy promptly. Upon receiving the request, the Tribunal will appoint a time and a place for the hearing and give written notice to the Minister and the document holder. The hearing will be held as soon as practicable.

Hearing/Determination

At the hearing both parties will be afforded a full opportunity consistent with procedural fairness and natural justice to present evidence and to make representations in relation to the suspension under review. The Tribunal may determine the matter by confirming the suspension or substituting the member's decision for the decision of the Minister.

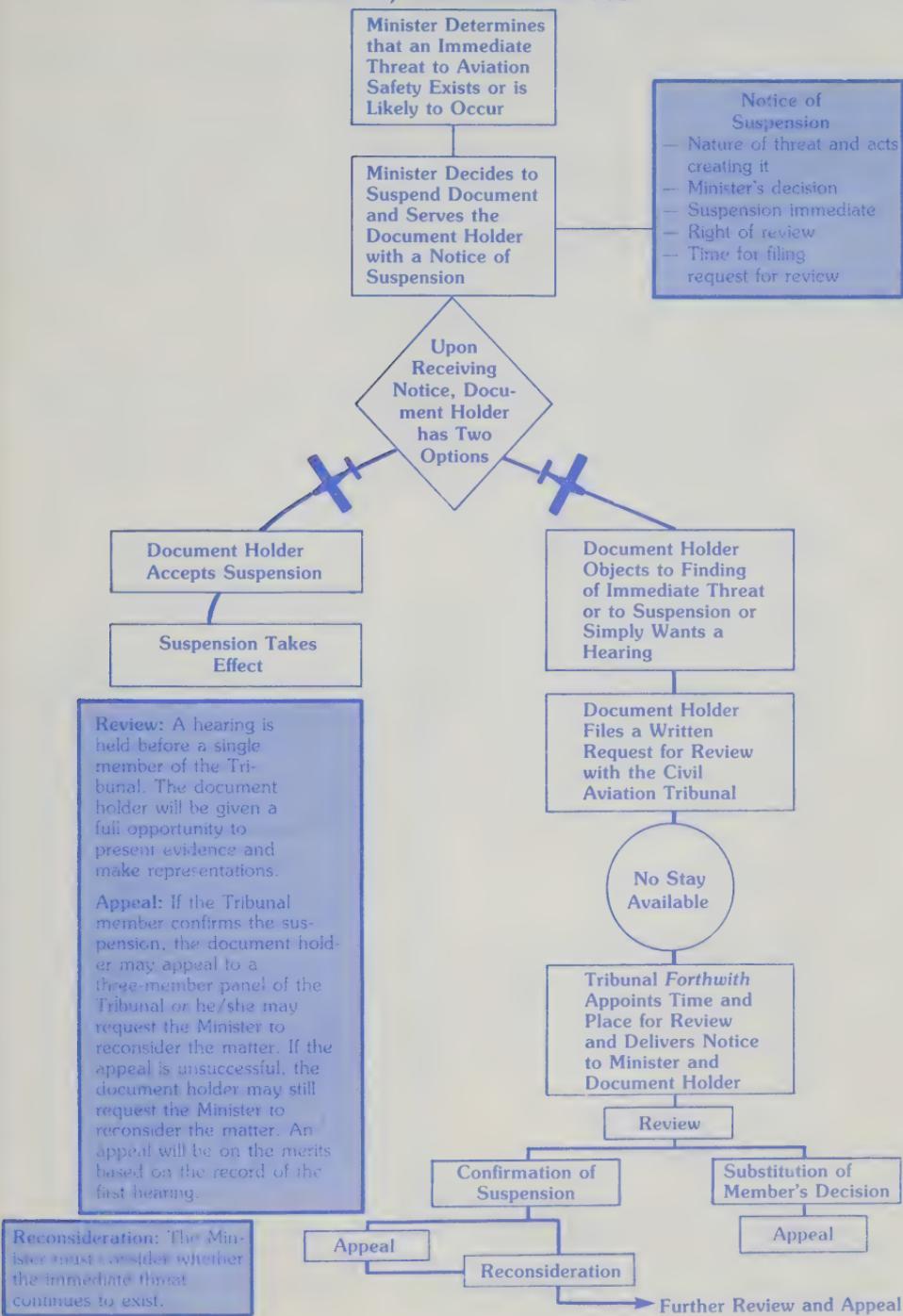
Right of Appeal

The document holder, the Minister and any person affected by the determination may appeal to a three-member panel of the Tribunal. The appeal will be based on the record of the hearing before the single member of the Tribunal, and only relevant evidence not available at that hearing may be introduced. The Tribunal will allow oral argument. The Tribunal may dismiss or allow the appeal and, in so allowing, may substitute its decision for the determination appealed against.

Request for Reconsideration

Instead of an appeal or after an unsuccessful appeal, the document holder may file a written request with the Minister to reconsider whether the immediate threat to aviation safety continues to exist or is likely to occur as described. In adopting this course, the document holder might seek to demonstrate that he/she has no intention of performing the acts or things that the Minister describes, or that the threat to safety has been removed. The Minister must reconsider the matter at once and communicate his/her decision to the holder. If he/she decides to confirm the suspension, the document holder may seek a review and an appeal of that reconsidered decision before the Tribunal.

Figure 4
**Suspension on Grounds of Immediate Threat
to Aviation Safety — Procedure**
Section 6, Aeronautics Act



VI. Medical and Other Grounds

Legal References: Sections 6.1, 6.2, Aeronautics Act.

Grounds for Decision

A review procedure similar to those discussed above applies to each of the following:

- A. A decision to suspend, cancel or refuse to renew a Canadian aviation document on *medical grounds*;
- B. A decision to suspend or cancel a Canadian aviation document on the grounds:
 - i) that the document holder is *incompetent*, or
 - ii) that the document holder or any aircraft, airport or other facility in respect of which the document was issued *ceases to have the qualifications necessary for the issuance of the document or ceases to meet or comply with the conditions on which the document was issued*.

Notice/Immediate Effect

In each of these cases the document holder will be sent a notice informing him or her of the decision, the medical grounds or the nature of the incompetence or disqualification relied upon, and the date before which a request for review must be filed (thirty days after the notice is served or sent). The suspension or cancellation may take effect immediately upon the sending or serving of notice of the Minister's decision, and a request for a review does not operate as a stay. However, the Tribunal member may consent to an extension of the time for filing a request for a review on an application brought by the document holder.

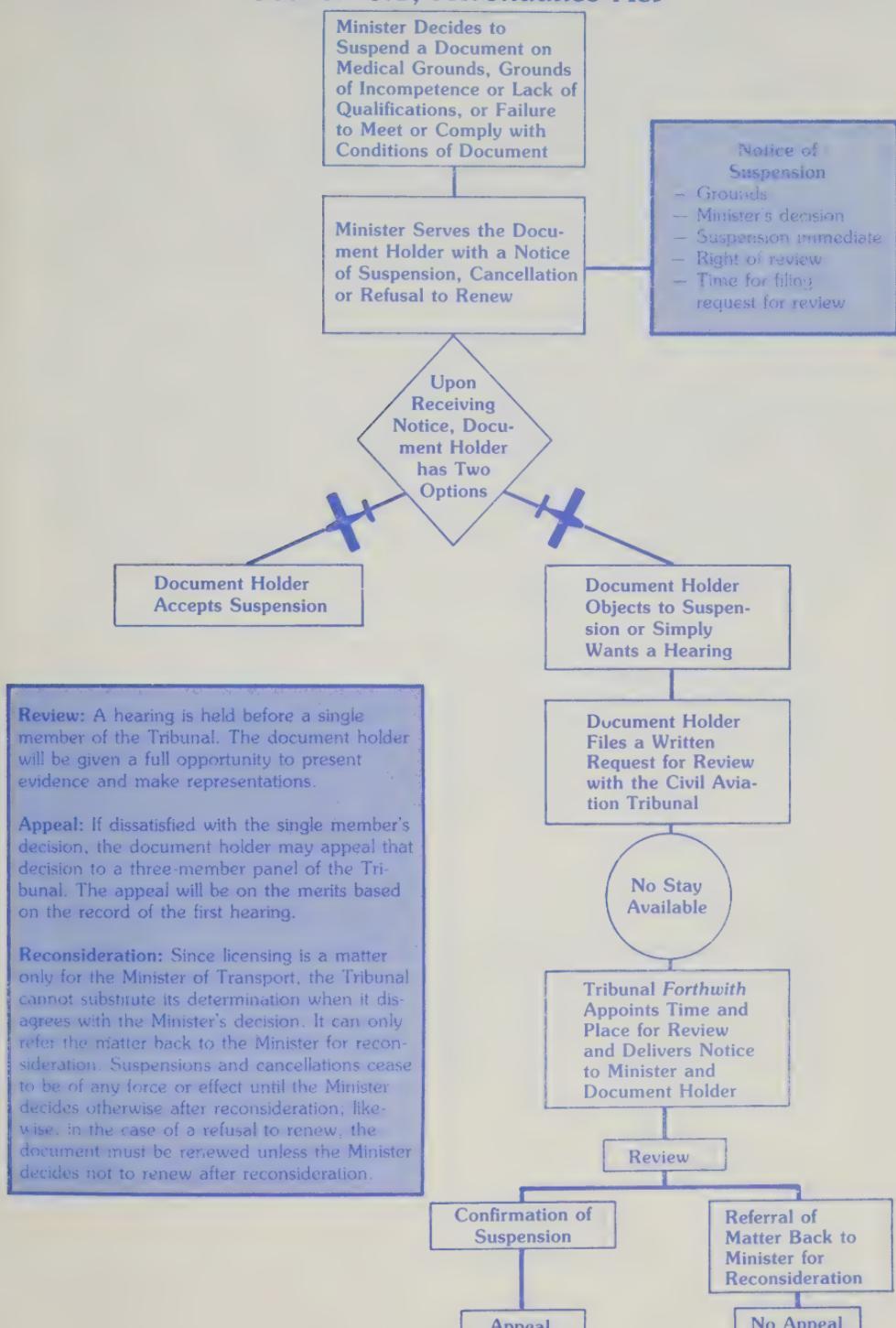
Hearing

The Tribunal will send to both the Minister and the document holder a notice of the time and the place appointed for the hearing. Both parties shall be provided with a full opportunity consistent with procedural fairness and natural justice to present evidence and to make representations in relation to the suspension, cancellation or refusal to renew under review.

Burden of Proof

A special onus arises where the Minister *refuses to renew* a licence on medical grounds. The document holder is required to establish that the Minister's decision in the matter is unjustified. There is no right to automatic renewal of a document. The holder must show that he/she is

Figure 5
Suspension on Medical or Other Grounds — Procedure
Section 6.1, Aeronautics Act



medically entitled to continue to hold the document and exercise its privileges, as he/she is in a better position to obtain medical information about himself/herself than is the Minister. Alternatively, the holder may seek to persuade the Tribunal that the Minister made the decision on the basis of incorrect or incomplete facts or on improper considerations.

Powers of Determination

All of the grounds for decision in this section relate to the qualifications of a person (medical or otherwise) to hold a Canadian aviation document. The qualifications are established to promote aviation safety. The ultimate responsibility for assessing a person's qualifications and granting a licence to fly must therefore remain with the Minister of Transport. For this reason, the powers of the Civil Aviation Tribunal on a review of a decision made on these grounds are limited. The Tribunal may confirm the suspension, cancellation or refusal to renew or may refer the matter back to the Minister for reconsideration, but may not make or substitute its own decision for that of the Minister. Although the Tribunal may have the expertise to assess the safety implications of a contravention of a regulation or a dangerous aviation practice (the subject matter of Sections 5.9 and 6, discussed above), it does not have the legislative authority to grant or revoke licences or privileges on its own assessment of a person's qualifications.

Reconsideration by Minister

Upon a referral of the matter to the Minister for reconsideration, a suspension or cancellation will cease to be of any force or effect until the Minister decides otherwise after reconsideration. In the case of a refusal to renew, the Minister shall renew the document as soon as practicable after the referral unless the Minister decides not to renew the document as a consequence of his/her reconsideration.

Right of Appeal

There is a right of appeal to the panel of the Tribunal from the determination of the single member. Again the appeal is on the merits and is based on the record. Oral argument and relevant evidence that was previously unavailable will be heard. Where medical grounds are in issue, the same burden of proof applies on appeal as on the initial review. The appeal panel is limited to dismissing the appeal or referring the matter back to the Minister for reconsideration.

VII. Records

Legal Reference: Section 7.21, Aeronautics Act.

Application for Removal of Notation of Suspension

Any suspensions imposed by the Minister will be noted in the records maintained by Transport Canada. A person affected by a suspension may apply to the Minister for the removal of any notation of that suspension two years after the suspension expires. The notation will be removed unless, in the opinion of the Minister, the removal from the record would not be in the interest of aviation safety, or a suspension or penalty has been recorded in respect of that person since the original suspension expired.

Review

The Minister's decision is subject to review by the Tribunal in the same way as a decision to suspend a Canadian aviation document on medical grounds. The Tribunal can only confirm the Minister's decision or refer it back to him or her for reconsideration. There is a right of appeal to the three-member panel of the Tribunal. The document holder may not make another application for removal of a suspension notation within two years of the date of a prior application.

Chapter Three

Offences and Punishment

I. Offences and Punishment: Introduction

Legal References: Sections 6.3-6.5, 6.6-7.21, Aeronautics Act.

Instead of suspending or cancelling the Canadian aviation document of a person who contravenes a provision, regulation or order, the Minister may decide to prosecute that person or assess a monetary penalty. These latter measures are the focus of this chapter.

Hybrid Offences/Summary Conviction Offences/ Designated Provisions

The *Aeronautics Act* establishes three classes of offences. “*Hybrid offences*” are those of a potentially most serious nature. Crown Counsel now have the option of proceeding against persons accused of such offences in the same manner as in prosecuting a serious criminal case. These offences are listed in the *Act*. Less serious offences, as before, are punishable on summary (short) conviction (hence, “*summary conviction offences*”). Generally speaking, any contravention of a provision of Part I of the *Act* or a regulation or order made under that Part is a summary conviction offence unless the *Act* provides otherwise. Both hybrid and summary conviction offences will be tried by judges in the criminal courts. Finally, a special procedure has been adopted for dealing with the contravention of “*designated provisions*”, that is, specially identified regulations and orders. The procedure enables the Minister of Transport to assess penalties to a maximum of one thousand dollars. The alleged offender may, if he/she desires, request a review of this administrative decision by a member of the Civil Aviation Tribunal.

Punishment/Prohibition/Forfeiture

Punishment upon conviction of the most serious hybrid offences may include imprisonment for up to five years, a fine, or both. Offences prosecuted by way of summary conviction are punishable by a fine of up to five thousand dollars for an individual, and twenty-five thousand dollars for a corporation; in most such cases no jail term can be imposed. A provincial court may, in addition to any other punishment, make an order prohibiting the person convicted from doing any act or thing authorized by his/her licence or permit, or from operating an aircraft or providing services essential to the operation of an aircraft. In serious cases, following a conviction for wilful misuse of Canadian aviation documents, a court may also order the forfeiture of an aircraft used in commercial air services.

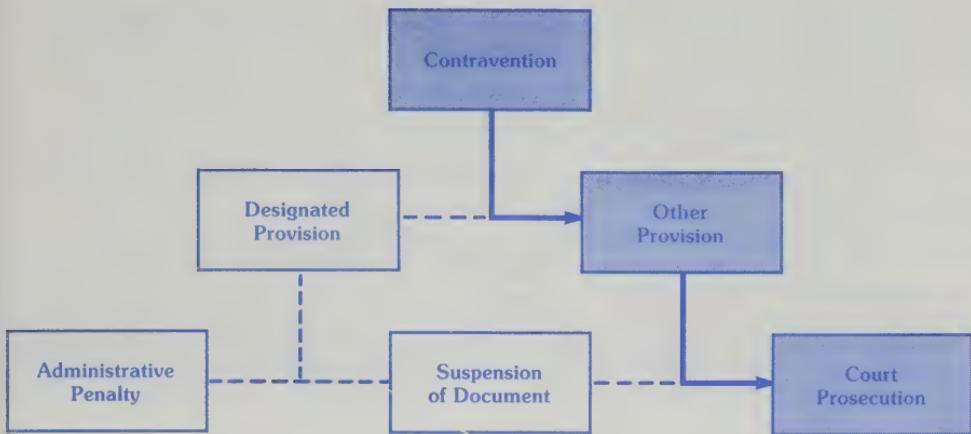


Figure 6. Prosecution.

Court prosecution may be considered only in respect of a contravention of a non-designated provision. The most serious offences ("hybrid offences") may be prosecuted by indictment or by way of summary conviction. Less serious offences are prosecuted by way of summary conviction only.

Registration

Fines and penalties, whether imposed by a court or by the Minister, may now be registered in the superior court of the provinces and recovered in the same manner as judgments in civil actions.

II. Hybrid Offences

Legal References: Subsections 6.3(1), (2), (4), (5), (6), (7), (8), (9), and Section 22, *Aeronautics Act*; Sections 646, 658, Parts XVII, XXIV, *Criminal Code*.

The most serious offences, those which pose the greatest risks to aviation safety and to persons and property, are known as "hybrid offences". They are set out in the *Aeronautics Act* (as opposed to the regulations and orders) to emphasize their importance and to put the aviation community on notice that severe penalties may be imposed.

Indictment/Summary Conviction

The term "hybrid offence" denotes an offence which may be prosecuted in either of two ways: "by indictment" (an "indictment" is the document containing the charge, as used in serious criminal cases) or "by way of summary conviction" (a shorter, simpler procedure). Crown counsel may proceed by indictment where, for example, the accused's actions have created the greatest danger to life or property. The same offence may be prosecuted by way of summary conviction where there was little

risk involved or severe penalties are not needed to deter the alleged offender.

Punishment

Where a hybrid offence is prosecuted by indictment, an accused faces possible imprisonment for up to five years, a fine, or both. When the same offence is prosecuted by way of summary conviction, the punishment is less severe: an individual faces a maximum fine of five thousand dollars, imprisonment for up to one year, or both; a corporation could be fined up to twenty-five thousand dollars. A minimum fine of two hundred and fifty dollars shall be imposed where a person is convicted of a second or subsequent offence (whether by indictment or by way of summary conviction).

For convenience, subsection 6.3(1) of the Act, containing the seven hybrid offences, is reproduced below. All of these offences require the Crown to prove an element of deliberation, that is, that the offender performed his actions either knowingly or wilfully.

6.3(1) No person shall

- (a) knowingly make any false representation for the purpose of obtaining a Canadian aviation document or any privilege accorded thereby;
- (b) wilfully destroy any document required under this Part [i.e. Part I] to be kept;
- (c) make or cause to be made any false entry in a record required under this Part to be kept with intent to mislead or wilfully omit to make any entry in any such record;
- (d) wilfully obstruct any person who is performing duties under this Part;
- (e) except as authorized under this Part, wilfully operate or otherwise deal with an aircraft that has been detained under this Part;
- (f) wilfully do any act or thing in respect of which a Canadian aviation document is required except under and in accordance with the required document; or
- (g) wilfully do any act or thing in respect of which a Canadian aviation document is required where
 - (i) the document that has been issued in respect of that act or thing is suspended, or
 - (ii) an order referred to in subsection 6.5(1) [a prohibition order, see section IV below] prohibits the person from doing that act or thing.

Limitation

Where the Crown has decided to proceed by way of summary conviction in respect of one or more of these offences, the proceedings must be instituted within twelve months from the time the acts were allegedly committed. No such limitation period applies where the offences are prosecuted by indictment.

Registration of Conviction

The Minister may register any conviction which imposes a fine in the superior court of any province and recover unpaid fines in the same manner as for a judgment in a civil action. All reasonable costs and charges necessary to register the conviction may also be recovered.

III. Summary Conviction Offences

Legal References: Subsections 6.3(3), (4), (5), (6), (7), (8), (9), and Section 22, *Aeronautics Act*; Part XXIV, *Criminal Code*.

A contravention of any provision, regulation or order made under Part I of the *Aeronautics Act* is a summary conviction offence unless it involves one of the hybrid offences listed in the Act or a designated provision (discussed below). The offences are set out in the Act, the *Air Regulations* and the *Air Navigation Orders*.

Punishment

A summary trial is held before a provincial court judge. Upon conviction, an individual is liable to a fine not exceeding five thousand dollars; a corporation is liable to a fine not exceeding twenty-five thousand dollars. A second conviction for any offence is punishable by a minimum fine of two hundred and fifty dollars. The judge may not sentence an offender to a prison term because these offences are of a less serious, regulatory nature.

Limitation

Proceedings against an offender must be started within twelve months from the time the contravention allegedly occurred.

IV. Prohibition

Legal References: Section 6.5, Paragraphs 6.3(1)(f), (g), *Aeronautics Act*.

Judicial Prohibition Order

New provisions of the *Aeronautics Act* permit courts to impose prohibition orders on persons convicted of offences under the Act. These orders may prohibit the holder of a Canadian aviation document or the owner or operator of an aircraft, airport or other facility in respect of which such a document was issued from exercising the privileges of that document at all times or at certain times and places. The orders may also prohibit convicted persons who do not hold a document from operating an aircraft or

providing services essential to the operation of an aircraft. Although the courts cannot assume the Minister's responsibilities and cancel or suspend a document, the imposition of a prohibition order will serve to prevent the recurrence of the offence. A breach of a prohibition order is an indictable offence.

Refusal to Issue Certificate

The Minister is given a special power of prohibition with respect to the operators of commercial air services. He or she may refuse, for a period not exceeding twelve months, to issue a certificate authorizing the operation of a commercial air service. This power is directed against individuals, corporations or principals of corporations convicted of wilfully operating without, or in violation of, a Canadian aviation document, or while under suspension or under an order of prohibition (two hybrid offences described in paragraphs 6.3(1)(f) and (g)).

V. Forfeiture

Legal References: Section 6.4, Paragraphs 6.3(1)(f), (g), Aeronautics Act.

When Forfeiture may be Ordered

To deter the carrying on of unlawful commercial air services, the criminal courts have also been given the power to order that aircraft used in such services be forfeited to Her Majesty as represented by the Minister of Transport. The order may be made only following the conviction *on indictment* of a person for wilfully operating such a service without, or in violation of, a Canadian aviation document, or while under suspension or under an order of prohibition (hybrid offences, paragraphs 6.3(1)(f) and (g)). Often fines are regarded as no more than the cost of doing business and do not approach the level of profits to be made by "bending the rules". Forfeiture may therefore be justified on the ground of aviation safety and as a means of ensuring that illegal operators do not gain a competitive advantage over other carriers. An order of forfeiture may be made in addition to any other punishment that the court may impose.

Relief from Forfeiture

Relief from forfeiture is available to innocent parties (perhaps a bank or a business partner) claiming an interest in the forfeited aircraft. An application must be made within thirty days after forfeiture, to a judge of the superior court of the province, for an order declaring the nature and extent of the applicant's interest, and that the interest is not affected by the forfeiture.

Before making the order sought, the judge must be satisfied that the applicant is innocent of any complicity or collusion in the offence, and that the applicant exercised reasonable care to satisfy himself/herself that

the aircraft was not likely to be used in contravention of the provisions of Part I or the regulations and orders. If an order is made, the applicant must then apply to the Minister for relief. Depending on the nature of the order, relief may take the form of a ministerial direction that the aircraft be returned or that an amount equal to the value of the applicant's interest be paid to him or her.

Where no application is made for relief from forfeiture, or where an application is made and the judge refuses to make an order, the aircraft will be disposed of in such manner as the Minister may direct. Ordinarily, the aircraft will be sold.

VI. Designated Provisions

Legal References: Sections 6.6-7.2, Aeronautics Act.

A new procedure has been established to authorize the assessment of administrative monetary penalties as an alternative to court prosecutions. The Minister of Transport will evaluate the safety implications of a particular contravention and determine the appropriate penalty. A person who is dissatisfied with a penalty assessed against him/her has recourse to the Civil Aviation Tribunal.

Designation

Certain regulations or orders which create offences may be "designated" or listed in a special regulation (see *Air Regulations*, Series I, Number 3, the *Designated Provisions Regulations*). A person who contravenes a "designated provision" may be punished either by the assessment of a penalty or the suspension of his/her Canadian aviation document (see Chapter Two above for a discussion of the suspension procedure). No court proceedings may be taken against that person.

Notice/Maximum Penalty

Once the appropriate penalty has been determined, the Minister must deliver to the person a notice informing him or her of the allegations and the amount of the penalty assessed. The maximum penalty for any contravention of a designated provision is one thousand dollars.

Payment/Informal Meeting

If the person does not wish to appear before the Civil Aviation Tribunal to present arguments, he or she may pay the penalty within the time specified in the notice (the deadline must be at least thirty days after the notice is served or sent). Full payment ends the matter; the Minister must accept the payment as complete satisfaction of the penalty, and no further proceedings may be taken against that person in respect of the contravention. Alternatively, the document holder may meet informally with the Regional Manager, Aviation Enforcement, to discuss the amount of

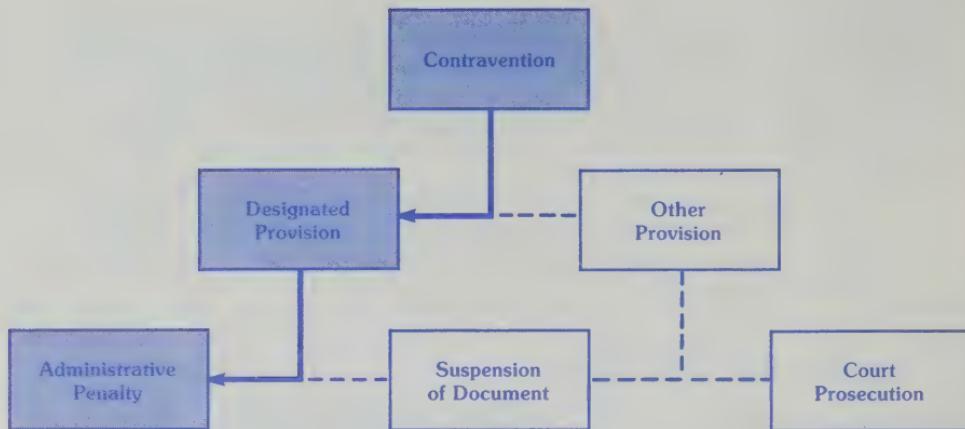


Figure 7. Administrative Penalties

Administrative penalties may be assessed only in respect of designated provisions. Generally, these provisions are of a minor or technical nature. The maximum penalty for contravention of a designated provision is \$1000.

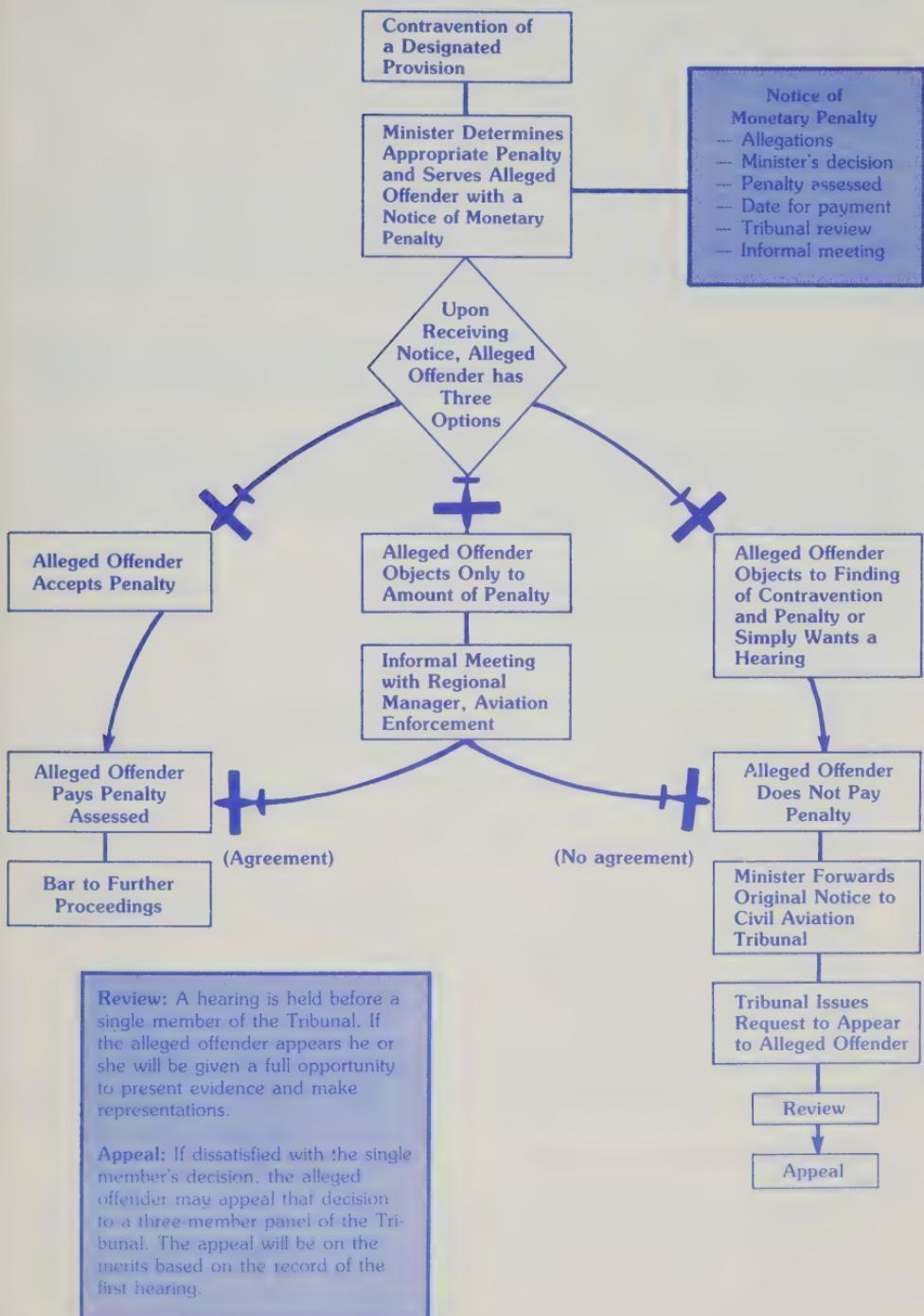
the penalty assessed. If an agreement is reached on a different penalty, the document holder may pay that amount and waive his or her right to a hearing.

If no agreement is reached or the person does not pay the penalty in time, the Minister must send a copy of the original notice to the Civil Aviation Tribunal. The Tribunal will serve the alleged offender with a request to appear at a hearing. Should the alleged offender fail to appear, the Tribunal member may make a determination after considering all of the information presented by the Minister. Where the member finds that the person has contravened the designated provision, he or she must issue to the Minister a certificate setting out that determination and the amount of the penalty specified in the original notice, and send a copy to the offender. This certificate may be registered in the superior courts of the provinces and enforced as if it were a judgment in a civil action.

Full Hearing

Where the alleged offender does answer the Tribunal's request and appears before it, he or she will be provided with a full opportunity to present evidence and make representations. The Minister must prove that the person appearing before the Tribunal has contravened the particular designated provision. The alleged offender may give evidence or testimony, but is not required to do so. He or she may attend, with or without counsel, simply to respond to the Minister's allegations. The Tribunal must then determine whether or not there has been a contravention. If it finds a contravention, the Tribunal must issue to the Minister a certificate setting out the determination and the amount of the penalty. Because both parties have been represented at the hearing, the Tribunal has full discretion to determine the amount of the penalty and is not bound by the amount specified in the original notice to the offender.

Figure 8
Administrative Penalty Procedure
Sections 6.6-7.2, Aeronautics Act



Right of Appeal

The offender, the Minister, or any person affected by the determination has a right of appeal to the three-member panel of the Tribunal. The appeal must be filed within ten days after the determination. It will go to the merits of the case (finding of contravention and amount of penalty) based on the record of the hearing before the single member. Oral argument shall be heard and the Tribunal may hear evidence previously unavailable so long as it is deemed necessary for the purposes of the appeal. The panel has full power to dismiss the appeal or allow it, substituting its own decision if appropriate. If it finds a contravention, the panel must issue to the Minister a certificate which can be registered and enforced in the provincial courts.

VII. Liability

Legal Reference: Section 7.3, Aeronautics Act.

Amendments to the *Aeronautics Act* enlarge the class of persons against whom proceedings may be brought in respect of an offence involving an aircraft or an aerodrome or other facility. These provisions are used where more than one person may be involved in an offence.

Where an offence has been committed and another person is subject to be proceeded against, the following rules apply:

Registered Owner

- A. The registered owner of an aircraft may be proceeded against unless, at the time of the offence, the aircraft was in the possession of a person other than the owner without the owner's consent;

Operator of Aircraft

- B. The operator of an aircraft may be proceeded against unless, at the time of the offence, the aircraft was in the possession of a person other than the operator without the operator's consent;

Pilot-in-Command

- C. The pilot-in-command of an aircraft may be proceeded against unless the offence was committed without the consent of the pilot-in-command; and

Operator of Aerodrome

- D. The operator of an aerodrome or other facility may be proceeded against unless the offence was committed without the consent of the operator.

Although each of these persons may face proceedings, none may be convicted and punished unless the Crown proves that he or she is an owner, operator, pilot-in-command or operator of an aerodrome and that an offence was committed. It is a good defence for a person to show that he or she either did not consent to another's possession of the aircraft (in the case of owners and operators) or did not consent to the commission of the offence (pilots-in-command and operators of aerodromes). Moreover, such persons may rely on the defence of due diligence (see "Defences", section VIII below).

VIII. Miscellaneous Provisions

Legal References: Defences – Section 7.4, Aeronautics Act; Sections 818, 819, Air Regulations.

Legal References: Evidence – Sections 7.5, 23, 24, Aeronautics Act.

Legal References Unpublished Regulations – Sections 5.1, 5.2, Aeronautics Act.

Defences

In addition to the defences which a person may be able to raise on the facts of his or her case (such as the avoidance of immediate danger, stress of weather or other unavoidable cause), the person may also argue that he or she exercised all due diligence to prevent the contravention alleged. If the Minister, the Civil Aviation Tribunal or a court finds that the person did exercise all due diligence, that person shall not be found to have contravened the provision, regulation or order. The defence of due diligence is now set out in the Act to make it clear that all offences created by the Act are strict (not absolute) liability offences.

Evidence of Alcohol

Where evidence of impairment due to alcohol is to be tendered, the Act now permits the Minister to tender a breathalyzer certificate obtained pursuant to the Criminal Code. Like the defence of due diligence, this provision applies to any proceedings taken against a person under Part I of the Act, whether these take the form of a court prosecution, the assessment of a penalty or the suspension or cancellation of a document.

Documentary Evidence

Special rules have been established concerning proof of documents made, given or issued under the Aeronautics Act. Properly certified copies of an official document will be admitted as proof of the original document, its issuance and its execution. Certificates stating that a document has or has not been issued or, having been issued, has expired or

has been cancelled or suspended will be admitted as evidence of those facts without a requirement for further proof. Finally, any entries made in a record required under the Act to be kept (such as a pilot's log book) will be proof of the matters stated therein as against the person who made the entry or was required to keep the record, unless evidence to the contrary is presented.

Unpublished Regulations

Certain regulations and orders may take effect (and thus create offences) before they are officially published in the *Canada Gazette*; others may be exempted from publication altogether. (Generally, a regulation must be examined, registered and published before it has legal effect.) In such circumstances, the regulation itself must clearly state that it takes effect before publication and the Minister must take reasonable steps to bring the regulation to the notice of persons likely to be affected by it. This notice is normally given by means of a Class I NOTAM (Notice to Airmen), advising the aviation community that a regulation addressing an urgent air-safety matter has been passed. Where a contravention is alleged to have taken place before publication, a certificate stating that a notice (i.e. a NOTAM) containing the regulation was issued before the contravention occurred will be accepted as proof that reasonable steps were taken to bring the regulation to the notice of those likely to be affected by it.

IX. Records

Legal Reference: Section 7.21, *Aeronautics Act*.

Criminal Records

A person convicted of an offence under the *Aeronautics Act*, whether by indictment or by way of summary conviction, will carry a criminal record. In certain circumstances, an application for a pardon may be made and, if a pardon is granted, the conviction will be vacated and will not reflect adversely on the character of the person convicted. Any person seeking the removal of a criminal record is advised to seek proper legal advice.

Application for Removal of Notation of Penalty/Review

Where a penalty is imposed pursuant to a designated provision, a notation will be made on the records maintained by Transport Canada for the person affected. That person may apply to the Minister for the removal of the notation two years after the penalty has been paid. The notation will be removed unless, in the opinion of the Minister, removal would not be in the interest of aviation safety, or a suspension or penalty has been recorded by the Minister since the penalty was paid. The Minister's decision is subject to review by the Civil Aviation Tribunal in the same way as

a decision to suspend a Canadian aviation document on medical grounds. The document holder may not make another application for removal of a penalty notation within two years of the date of a prior application.

Appendix A

Table of Offences and Punishment

Class of Offence	Designated Provisions	Summary Conviction Offences	Hybrid Offences	
Example	Air Regs., s. 534(2)(a): Low flying over a built-up area	Air Regs., s.517(b): Acrobatic flight over urban areas	<i>Aeronautics Act, s.6.3(1)(e): Wilfully operating a detained aircraft</i>	
Proceedings	Administrative Assessment of Penalty	Court Prosecution	Court Prosecution	
		By Way of Summary Conviction	By Way of Summary Conviction	By Indictment
Punishment Individuals	Administrative Penalty Maximum: \$1000.	Fine Maximum: \$5000. No Imprisonment Prohibition	Fine Maximum: \$5000. Imprisonment up to one year Prohibition	Fine No Maximum Imprisonment up to five years Prohibition
Corporations	Administrative Penalty Maximum: \$1000.	Fine Maximum: \$25,000. Prohibition	Fine Maximum: \$25,000. Prohibition	Fine No Maximum Prohibition
Commercial Air Services (Wilful misuse of documents – paragraphs 6.3(1)(f)(g))	—	—	—	Forfeiture
	—	—	Denial of Operating Certificate for up to twelve months	Denial of Operating Certificate for up to twelve months
Recourse	Review by Civil Aviation Tribunal Appeal to Panel	Appeal to a Higher Court	Appeal to a Higher Court	Appeal to a Higher Court

Note: For each type of offence the Minister may decide to suspend or cancel the appropriate Canadian aviation document as an alternative measure. See Chapter Two for further information.

Appendix B

Civil Aviation Tribunal:

Addresses and Telephone Numbers

Readers may contact the Civil Aviation Tribunal at the following addresses:

Principal Office:
Civil Aviation Tribunal
Place de Ville
Tower A, 19th Floor
Room 1941
Ottawa, Ontario.
K1A 0N5

Telephone: (613) 998-1275

Registrar:
Civil Aviation Tribunal
First Canadian Place
Suite 4520
P.O. Box 181
Toronto, Ontario.
M5X 1A6

Telephone: (416) 973-4738

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